

**BOARD OF APPEALS CASE NO. 5167**

\*

**BEFORE THE**

**APPLICANTS: Ronald & Gloria Perkins**

\*

**ZONING HEARING EXAMINER**

**REQUEST: Variance to allow an existing deck with steps and retaining wall within the required setbacks; 1956 Glenroths Drive, Abingdon**

\*

**OF HARFORD COUNTY**

\*

**Hearing Advertised**

**HEARING DATE: October 29, 2001**

\*

**Aegis: 8/3/01 & 8/8/01**

**Record: 8/3/01 & 8/10/01**

\*

\* \* \* \* \*

## **ZONING HEARING EXAMINER'S DECISION**

The Applicants, Ronald & Gloria Perkins, are seeking a variance, pursuant to Section 267-36B, Table VI, and Section 267-23C(1)(a)(6), of the Harford County Code, to allow an existing deck with steps within the 30 foot rear yard setback (27 feet existing), and a variance, pursuant to Section 267-26C(6), to allow an existing retaining wall within the recorded easement in an R3/Urban Residential District.

The subject property is located at 1956 Glenroths Drive, Abingdon, Maryland 21009 and is more particularly identified on Tax Map 56, Grid 4C, Parcel 587, Lot 78. The property is 2,000 square feet, improved by an existing townhouse with rear deck, is presently zoned R3/Urban Residential District/Conventional with Open Space (R3/COS). The parcel is entirely within the First Election District.

Mr. Ronald Perkins appeared and testified that he was the owner of the subject parcel and the Applicant herein. Mr. Perkins built the deck pursuant to a filed and approved permit; however, the permit applied for indicated a deck size of 8 feet by 16 feet and his deck was actually constructed at 14 feet by 16 feet. The footers for the deck were inspected and approved and he commenced construction. During construction his contractor indicated that a retaining wall would be one way to alleviate a severe erosion problem existing to the rear of the home. The Applicant constructed the retaining wall which now encroaches into the setback assuming that his contractor had obtained all necessary permits and inspections. He was unaware of any zoning problem until notified that he needed a variance by the Department of Planning and Zoning.

The Applicant described his property as severely sloping to the rear of his house and provided pictures as Exhibits 7-11, that clearly show a significant slope to the rear of the

## **Case No. 5167 – Ronald & Gloria Perkins**

Applicant's home and a prior existing erosion problem resulting from the slope. The Applicant claims that the retaining wall has alleviated the erosion problem and no adverse impacts result from its construction or location. The deck is actually on two levels, one located on the first floor and one on the basement level of the house. The Applicant intends to install electrical and minor plumbing service to the deck (electrical for deck lighting and plumbing for a sink drain attached to an outdoor grill/bar/sink combo). The Applicant stated that there are many other similar decks in his neighborhood and the retaining wall is not unlike other retaining walls he has seen elsewhere in Harford County. The house was placed 2 feet further back than other houses and to the rear is both a storm water management area and open space for community use. The retaining wall is 4 feet high and has succeeded in stopping the erosion that existed prior to its construction.

The Applicant did not feel that any of his neighbors' properties would be negatively impacted by a grant of the variance and stated that removal of the deck and retaining wall would reduce his enjoyment of his home since any deck built without a variance could only be 6 feet wide. It would also be quite costly to remove the current structure.

The Department of Planning and Zoning has recommended disapproval of the request. While the staff report indicates a finding that the property was not unique, Mr. Anthony McClune, appearing for the Department and upon hearing the testimony of the Applicant and reviewing the Exhibits, admitted that the slopes and presence of a storm water management area to the rear was a unique topographic situation. Mr. McClune still thought that the Applicant should have obtained his permits and variances prior to construction but admitted, upon further review, that he and the department would support the Applicant's request based on what he now knows about the property and the request. Mr. McClune pointed out that the Department of Public Works had no objection to the retaining wall location within the easement area, but would require the Applicant to remove it at the Applicant's expense if the Department required access to that area in the future. The Applicant agreed to such a condition of approval.

There were no persons appearing in opposition to the request.

### **CONCLUSION:**

The Applicants, Ronald & Gloria Perkins, are seeking a variance pursuant to Section 267-36B, Table VI, and Section 267-23C(1)(a)(6) of the Harford County Code, to allow an

## **Case No. 5167 – Ronald & Gloria Perkins**

existing deck with steps within the 30 foot rear yard setback (27 feet existing), and a variance pursuant to Section 267-26C(6), to allow an existing retaining wall within the recorded easement in an R3/Urban Residential District.

Harford County Code Section 267-11 permits variances and provides:

"Variances from the provisions or requirements of this Code may be granted if the Board finds that:

- (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Code would result in practical difficulty or unreasonable hardship.
- (2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Code or the public interest."

In addition to the requirements of approval set forth in Section 267-11, the Maryland courts have provided additional guidance regarding the approval of variances. The Maryland Court of Special Appeals has provided guidance in matters of variance requests and described a two step analysis in determining whether such requests should be granted. According to the guidance provided by the Court, the variance process is a two-step sequential process:

1. The first step requires a finding that the property whereon structures are to be placed (or uses conducted) is, in and of itself, unique and unusual in a manner different from the nature of surrounding properties such that the uniqueness or peculiarity of the property causes the zoning provision to impact disproportionately upon the property. If this finding cannot be made the process stops and the variance must be denied. If, however, the first step results in a supportive finding of uniqueness or unusualness, then the second step in the process is taken.
2. The second step is a demonstration whether unreasonable hardship (or practical difficulty) results from the disproportionate impact of the ordinance caused by the property's uniqueness exists." Cromwell v. Ward, 102 Md. App. 691 (1995).

Following Cromwell, the Hearing Examiner finds as a matter of fact that the subject property has topographic features that cause the setback provisions of the Code to impact disproportionately on this parcel as compared to others. The parcel is relatively small and there is very little back yard. The lot is further constrained by an easement located to the

## **Case No. 5167 – Ronald & Gloria Perkins**

rear property line and it backs up to open space and a storm water management area. To the rear of the property the land slopes severely away from the house and this has created an erosion situation in the past. Other property owners commonly construct decks to the rear of their house and the size and location of the subject deck is in keeping with those commonly found and enjoyed in Harford County. The retaining wall does encroach into an easement area but the Applicant has agreed to remove it at his own expense if the need arises. Under those conditions the Department of Public Works has no objection to its location. Based on the photographic evidence presented, the Hearing Examiner is satisfied that no adverse impacts will result from the grant of the requested variances.

Based on the totality of the record, the Hearing Examiner recommends approval of the requested variances, subject to the following conditions:

1. The Applicant refile an accurate dimensional plat with the Department of Planning and Zoning showing the accurate size and location of all improvements to the rear of the house.
2. That all applicable permits and inspections be obtained.
3. That no electrical or plumbing installation take place without first obtaining the appropriate and necessary permits and inspections.
4. That the Applicant remove the retaining wall, at his own expense, from the easement upon request of the Department of Public Works or other authorized County agency.

Date    NOVEMBER 7, 2001

William F. Casey  
Zoning Hearing Examiner